

REMARKS

Claims 6 and 35 have been amended to correct a typographical errors. No claims have been added or cancelled in this Reply. Accordingly, claims 3-10, 12-15 and 32-39 are pending.

The Examiner has grouped the claims for restriction purposes as follows:

- Group I: Species 1 of Figure 3 directed to an audio conferencing method of Fig. 2 in which an Interactive Voice Response (IVR) server is not used;
- Group II: Species 2 of Figure 4 directed to an audio conferencing method of Fig. 2 in which an Interactive Voice Response (IVR) server is used;
- Group III: Species 3 of Figure 5 directed to a dial-out method of the present invention.

The Applicant hereby elects, with traverse, to continue the prosecution of the Group I claims where the IVR server is not necessarily used, i.e., claims 3-5, 7-10 and 12-15. Applicant reserves the right to petition the Director to review this restriction requirement. Alternatively, non-elected claims may be pursued in a divisional application to be filed prior to the issuance or abandonment of this application.

The Examiner has asserted “[c]urrently, there are no generic claims.” Restriction Requirement dated May 11, 2009 at p. 2. However, Applicant asserts that Independent claim 7 is a generic claim across Group I and Group II because the limitations of claim 7 are agnostic as to “an Interactive Voice Response (IVR) server [being] used.” Additionally, each of claims 3-5, 8-10 and 12-15 depend from claim 7 and are also agnostic as to an IVR. Thus, as stated above, Applicant elects, with traverse as explained below, to continue prosecution of claim 7 and its dependent claims each of which is generic across Group I and Group II, and each of which reads on the elected species.

Applicant asserts this election/restriction requirement is improper for at least the reasons set forth below. The Examiner is reminded, “[e]very requirement to restrict has two separate aspects: (A) the reasons (as distinguished from the mere statement of conclusion) why each invention as claimed is either independent or distinct from the other(s); and (B) the reasons why there would be a serious burden on the examiner if restriction is not required, i.e., the reasons for insisting upon restriction therebetween...” M.P.E.P. § 808.

The Examiner asserts, with no explanation or reasons, “[t]here is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.” Restriction Requirement dated May 11, 2009 at p. 2. However, Applicant submits that no serious burden exists because a search has already been performed and two (2) separate Office Actions on the merits have already been received for this Application. In response to these two Office Actions *no substantive amendments to the claims have been made* and therefore the Examiner’s search strategy should not have to change.

Furthermore, “the examiner, in order to establish reasons for insisting upon restriction, *must explain* why there would be a serious burden on the examiner if restriction is not required.” M.P.E.P. § 808.02 (emphasis added). The Examiner has simply made a conclusory statement that the “species require a different field of search.” The Examiner has not indicated that the different field of search is in fact pertinent to the type of subject matter covered by the claims as required by M.P.E.P. § 808.02(C). The Examiner is further reminded, “[w]here, however, the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, *no reasons* exist for dividing among independent or related inventions.” M.P.E.P. § 808.02. For at least these reasons, Applicant submits that this restriction requirement is improper and should be withdrawn.

Applicant invites the Examiner to call the undersigned with respect to any questions pertaining to this application (832/446-2445).

Respectfully submitted,

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